



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.HOha13051133
[REDACTED]

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,

v.

CRESTWOOD VILLAGE SOUTH APARTMENTS,
And JUSTUS PROPERTIES INC,
Respondents.

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice has occurred. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On May 1, 2013, [REDACTED] filed a Complaint with the Commission against Crestwood Village South Apartments ("Respondents") alleging discrimination on the basis of disability, in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et. seq.*), the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) and [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed and both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Executive Director now finds the following:

Complainant uses a wheelchair and is a resident of Respondent's facility which provides housing for individuals aged 55 and older. Respondent's facility provides numerous services to its residents, including, but not limited to complimentary transportation services six days a week to various amenities such as shopping centers and grocery stores. The bus seats 22 residents, departs upwards of 5 times per day, and is used to transport residents to several special events per month. This transportation is included as part of the amenities provided by Respondent at no additional cost, but cannot accommodate an individual in a wheelchair.



The first issue before the Commission is whether Respondent denied Complainant a reasonable accommodation. In order to prevail, the Complainant must prove that 1) she falls within a protected class; 2) Respondent knew or should have known Complainant was a member of a protected class; 3) Complainant made a verbal or written request for a reasonable accommodation; and 4) Respondent denied or unreasonably delayed Complainant's request for a reasonable accommodation.

Complainant is a member of a protected class by virtue of her disability which requires the use of a wheelchair. Moreover, it is clear that Respondent knew of Complainant's disability because of her use of a wheelchair. The record further shows that Complainant made several verbal requests and inquires to various members of Respondent's staff about the availability of accessible transportation and Respondent denied the requests. While Respondent indicates that providing wheelchair accessible transportation would be financially burdensome, it provided no evidence to substantiate these claims. Further, Respondent refused to participate in the interactive process to identify alternative methods of transportation for Complainant. As such, there is reasonable cause to believe that Respondent denied Complainant's reasonable request for an accommodation.

Similarly, the second issue before the Commission is whether Respondent subjected Complainant to different terms and conditions. In order to prevail, the Complainant must prove that 1) she falls within a protected class; 2) Complainant was eligible, ready, willing and able to use the provided transportation consistent with Respondent's reasonable terms and conditions; 3) Complainant made it known that she wanted to use the transportation service available to residents of Respondent's facility; 4) Respondent failed to make the service available to Complainant; and 5) Respondent made the transportation service available to non-disabled residents.

As previously stated, Complainant is a member of a protected class by virtue of her use of a wheelchair. Moreover, Complainant is eligible for Respondent's transportation services by virtue of her tenancy with Respondent and Complainant made her desire to use the complimentary bus services known to Respondent. The evidence is clear that Respondent's current bus cannot accommodate individuals in wheelchairs and Respondent made no effort to provide Complainant with another mode of transportation while consistently providing transportation to non-disabled tenants. Further, Respondent denied Complainant an opportunity to participate in the residents' spring sale because it refused to modify the set up such that it could accommodate a wheelchair. Thus, based upon the above findings, it is reasonable to believe that Respondent's actions have violated the applicable civil rights laws.

As permitted by 910 IAC 2-6-6(h), any party to this Complaint may elect to have the claims asserted in this Charge decided in a state court, in lieu of an administrative proceeding under 910 IAC 2-7. Such an election must be made no later than twenty (20) days after service of this Notice. The notice of election must be filed with the Commission and served on the Executive Director, Respondent, and Complainant.

If such an election is not timely made, an administrative hearing of this matter will be scheduled by the Administrative Law Judge. Respondents shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. Birgit Huffman and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing.

If at any time following service of this charge Respondents intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondents must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

June 28, 2013
Date

Jamal L. Smith
Executive Director
Indiana Civil Rights Commission